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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,815	12/13/2001	Joseph Giordano III	CISCO-5487	7269

7590

07/18/2006

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EXAMINER
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PEZZLO, JOHN

ART UNIT	PAPER NUMBER
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2616

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

51

<b>Office Action Summary</b>	<b>Application No.</b> 10/017,815	<b>Applicant(s)</b> GIORDANO ET AL.	
	<b>Examiner</b> John Pezzlo	<b>Art Unit</b> 2616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 64-68,80-84,92,93 and 104-108 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 64-68,80-84,92,93 and 104-108 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

I. Claims 64-68, 80-84, 92, 93, and 104-108 are rejected under 35 U.S.C. 102(e) as being anticipated by Iannucci et al. (US 6,219,698 B1) hereinafter Iannucci.

It is noted that the since the specification does not explicitly state the definition for firmware the examiner treats firmware and software as interchangeable items.

1. Regarding claims 64, 80 and 104 – Iannucci discloses establishing a telecommunications session between the network appliance and a network server, refer to Figure 1 and column 2 lines 51 to 59 and column 4 lines 38 to 46.

Iannucci discloses accessing a web page stored on the network server, the web page having links to current firmware for the network appliance stored on a network storage device, refer to column 3 lines 3 to 40 and column 5 lines 24 to 52.

Iannucci discloses determining the version of firmware stored on the appliance, refer to column 5 lines 10 to 51.

Iannucci discloses receiving at the network appliance a later version of the firmware if a later version of firmware is available via the web page, refer to column 5 lines 10 to 67 and column 6 lines 1 to 6.

Iannucci discloses storing the later version in the local non-volatile memory, refer to column 4 lines 46 to 55 and column 5 lines 52 to 67.

2. Regarding claims 65, 81, and 105 – Iannucci discloses obtaining a version identification corresponding to a firmware component currently available on the network storage device from the network server, refer to Figure 3 and column 6 lines 28 to 49.

Iannucci discloses obtaining a version identification corresponding to the firmware component currently stored in local non-volatile memory of the network appliance, refer to Figure 2 and column 5 lines 10 to 25.

Iannucci discloses determining at the network appliance if the firmware component available on the network storage device is more current than the firmware component stored in local non-volatile memory of the network appliance, refer to Figure 2 and column 5 lines 10 to 51.

3. Regarding claims 66, 82, and 106 – Iannucci discloses sending a version identification corresponding to a firmware component currently stored in local non-volatile memory from the network appliance to the network server, refer to Figure 3 and column 6 lines 28 to 49.

Iannucci discloses determining at the server if the identified version has been superseded, refer to Figure 2 and column 5 lines 10 to 51.

4. Regarding claim 67, 83, and 107 – Iannucci discloses establishing a telecommunications session between the network appliance and a network server, refer to Figure 1 and column 2 lines 51 to 59 and column 4 lines 38 to 46.

Iannucci discloses transmitting firmware revision information from the network appliance to the network server, refer to Figure 2 and column 5 lines 10 to 25.

Iannucci discloses receiving a communication from the network server indicating the availability of a firmware upgrade, refer to Figure 2 and column 5 lines 10 to 51.

Iannucci discloses automatically receiving the firmware upgrade if the configuration profile permits such automatic reception, refer to column 5 lines 10 to 67 and column 6 lines 1 to 6.

5. Regarding claim 68, 84, and 108 – Iannucci discloses presenting a user of the network appliance with an option to accept the firmware upgrade if the configuration profile does not permit automatic downloading, refer to column 5 lines 50 to 67.

6. Regarding claim 92 – Iannucci discloses non-volatile memory for storing firmware, refer to column 4 lines 46 to 55 and column 5 lines 52 to 67.

Iannucci discloses a data telecommunications device communicating with a network server, refer to Figure 1 and column 2 lines 51 to 59 and column 4 lines 38 to 46.

Iannucci discloses a browser for accessing a web page stored on the network server, the web page having links to current firmware for the network appliance stored on a network storage device, refer to column 3 lines 3 to 40 and column 5 lines 24 to 52.

Iannucci discloses a determiner for determining whether a more recent version of firmware is available on the network storage device and causing such a more recent version to be downloaded to and received by the network appliance and stored in said non-volatile memory, refer to Figure 2 and column 5 lines 10 to 51.

7. Regarding claim 93 – Iannucci discloses non-volatile memory for storing a configuration profile and firmware, refer to column 4 lines 46 to 55 and column 5 lines 52 to 67.

Iannucci discloses a data telecommunications device communicating with a network server and transmitting to the network server firmware revision information corresponding to installed firmware of the network appliance, refer to Figure 1 and column 2 lines 51 to 59 and column 4 lines 38 to 46 and Figure 2 and column 5 lines 10 to 25.

Iannucci discloses a determiner receiving a communication from the network server indicating the availability of a firmware upgrade and automatically receiving and installing the firmware upgrade onto the network appliance if the configuration profile is configured to permit such automatic reception, refer to Figure 2 and column 5 lines 10 to 51.

### ***Response to Arguments***

Applicant's arguments filed 19 May 2006 have been fully considered but they are not persuasive. Applicants argue on page 35 the differences between firmware and software. The examiner respectfully disagrees. Since no definition was provided in the specification the meaning of firmware is obtained from a technical dictionary "IEEE Standard Terms" which supports the examiner's position that firmware and software are interchangeable items. Furthermore, nothing in the claim structure supports firmware and software differences, software is stored in non-volatile memory and software comprises computer instructions just like firmware.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 2616

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pezzlo whose telephone number is (571) 272-3090. The examiner can normally be reached on Monday to Friday from 8:30 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C.

or faxed to:

(571) 273-8300

For informal or draft communications, please label "PROPOSED" or "DRAFT"

Hand delivered responses should be brought to:

Jefferson Building


2A15

500 Dulany Street

Alexandria, VA, 22313.

John Pezzlo

12 July 2006

  
JOHN PEZZLO  
PRIMARY EXAMINER